

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44316
Docket No. SG-45686
20-3-NRAB-00003-190593**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of R.G. Bohner, for reinstatement to his Signalman position with compensation for all lost time, including overtime from July 26, 2018, and continuing until the violation is resolved, account Carrier violated the current Signalmen’s Agreement, particularly Rules 10, 56, 57, and 65, when it failed to hold an Unjust Treatment Hearing after improperly disqualifying the Claimant following a Functional Field Evaluation (FFE).”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

At the time this dispute arose, the Claimant was assigned to a Skilled Signalman position on Gang No. 3654 in Carrier's Signal Department. On July 25, 2018, the Claimant was provided a letter of disqualification. On July 26, 2018, the Organization requested an Unjust Treatment Hearing on behalf of the Claimant to interpret any inconsistencies from the July 19, 2018, Functional Field Evaluation (FFE) held in Kansas City, Missouri. The Organization made a second request in a letter dated August 17, 2018.

On August 29, 2018, the Organization filed this claim, contending that the Carrier had violated the Agreement, in particular, Rules 10, 56, 57 and 65, when it failed to hold the requested Unjust Treatment Hearing. In a letter dated September 24, 2018, the Carrier denied the appeal writing,

"This refers to the Organization's letter dated August 29, 2018 which presents a claim filed on behalf of employee; Bohner, Robert Gregory..., Brian Timbes..., Joel Jenkins..., hereinafter referred to as "Claimants."

After review of the matter, the Carrier finds your claim is without merit. As the moving party, the Organization bears the burden of proof. Simple allegations do not satisfy your burden of proof obligation, or justify presentation of a claim. The Organization must provide documents or evidence in support of its allegations. If such documentation is to be provided, the Organization should furnish such with its appeal letter to ensure compliance with the good faith provisions of the Railway Labor Act, and allow the labor officer an opportunity to fully review the allegation prior to any future conference.

Regarding the claimed remedy, the Organization must cite the specific agreement provision(s) and/or arbitrated authority which support payment, as well as demonstrate why payment is justified considering the specific factual circumstances presented in each claim. Without such, the Organization fails to meet its burden of proof requirement.

The Organization has failed to establish a prima facie case for the alleged violation set forth in the claim. This claim is respectfully denied in its entirety for a lack of merit and agreement support. Failure to take

exception with anything in the Organization's letter is not to be construed as acquiescence or acceptance of your position in this claim."

The Organization appealed the denial asking that the claim be allowed for an additional reason: that the Carrier's denial failed to provide any reasons for the disallowance as required by Rule 56 of the parties' Agreement. In the Carrier's second level declination, it asserted that the Claimant was not entitled to an Unjust Treatment Hearing because the issue he sought to address was covered by Rule 52 of the Agreement but did not respond to the Organization's assertion that its first level denial was insufficient under Rule 56.

The parties held a claims conference and were unable to resolve the claim on-property. As such, the claim is now properly before this Board for final adjudication.

The Organization contends that Rule 57 of the current Signalmen's Agreement allows an employee who feels unjustly treated to be granted a fair and impartial Hearing. However, in the instant case, Carrier arbitrarily denied the Claimant's request for an Unjust Treatment Hearing, depriving him of his contractual right to due process. The Claimant followed the provisions of Rule 57 and Carrier failed to respond.

The Organization further contends that the Carrier's position that it need not hold an Unjust Treatment Hearing because Rule 52 already provided a remedy is unfounded. The Organization contends that an Unjust Treatment Hearing would have given the Claimant an opportunity to challenge the Carrier's findings in the FFE.

The Organization contends that the Carrier has the obligation to notify the Claimant of the reasons for its disallowance of the claim, but its general and vague answer was insufficient. Therefore, the Organization contends that the Carrier violated the time provisions of Rule 56. Thus, the instant claim should be sustained.

The Carrier contends that it holds the managerial prerogative to determine fitness and ability and such decisions are subject to review by this Board only as to whether the determination was arbitrary. Further, it is well established that once the Carrier has determined that an employee does not possess the requisite fitness and ability to perform a job, the burden shifts to the Organization to show that the

Carrier's determination is arbitrary or capricious. The Organization has failed to provide any evidence to refute the Carrier's basis for removing the Claimant.

The Carrier contends that the Organization has failed to show that the Carrier had an obligation to hold an Unjust Treatment Hearing under Rule 57, as it does not apply if a grievance is already covered by another Rule under the Agreement. The Carrier points out that the Claimant has already sought relief in another claim for the same disqualification.

Rules 56 and 57 of the parties' Agreement provide, in part:

"RULE 56. TIME LIMIT CLAIMS AND GRIEVANCES.

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within Sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance.

If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

RULE 57 - UNJUST TREATMENT

An employee who considers himself unjustly treated, other than covered by these rules, will have the same right of hearing and appeal as provided in Rule 55 B if written request is made to his immediate supervisor within ten (10) calendar days of cause of complaint. Failing to dispose of the complaint in such hearing, appeal may be taken in accordance with Rule 56.

Any complaint made by one employee against another will be made in writing."

The parties' Agreement provides at Rule 56 that all claims must be filed within 60 days of the date of the occurrence on which the claim is based. There is no question that the Claim here was timely filed. The Rule goes on to say that if the claim is to be disallowed, the Carrier must "notify whoever filed the claim or grievance.... in writing of the reasons for such disallowance" within 60 days and "[I]f not so notified, the claim or grievance shall be allowed as presented." This Board has recognized that the timelines serve to expedite the procedure of filing and considering claims and preventing unnecessary delays on the property. Here, the Carrier provided an answer within sixty days, but the Organization challenges that answer as failing to give the "reasons" for the disallowance.

In Third Division Award 4529, this Board noted that the purpose of requiring the Carrier to give a reason for its disallowance is to permit the Organization to "determine the relative merits of the parties' respective contentions and help determine whether or not an appeal is desirable." When the Carrier fails to comply with this obligation, the Board has held that the proper remedy is to sustain the claim, without regard to the underlying merits of the claim. *Id.*

When the Carrier provides an answer that fails to constitute a reason under the provisions of the Agreement, the initial claim must be sustained. In Third Division Award 11986, this Board found that "We find no basis for claim in this case, therefore your claim must be denied," failed to provide sufficient reason for the disallowance. The Board wrote,

"There was no way Claimant could tell from that statement what he was required to meet. Did it mean basis in fact, basis in law, identity of claimant, or what did it mean?

We hold that it was too indefinite, uncertain and general to constitute a reason under the provisions of the agreement."

In Award 1 of Public Law Board 34, the Carrier's disallowance stated, "You have not furnished written proof that this alleged violation occurred as claimed; therefore, in the absence of such written proof the time slip is returned to you declined." The Board found that the reason given was not a "reason" as contemplated by the Agreement, as it failed to frame the issues in dispute.

In Award 206 of Public Law Board 7163, the Carrier presented a disallowance which ostensibly covered seven separate claims. That Board concluded,

“This Rule requires the Highest Designated Labor Relations Officer to provide the reason for the denial of a claim. It is not sufficient to merely state that the claim is denied. Our review of the denial letter issued by Pastza shows that the reason for denying this particular claim was not stated in the letter. Instead, this appears to be a form letter for the purpose of denying several unrelated claims.”

The disallowance presented by the Carrier in the instant claim appears to apply to the Claimant and two unrelated claimants. There is no way to know whether each part of the answer applies to all or any of them. The “reasons” are the same boilerplate rationales given for denial in many, if not nearly all, of the Carrier’s disallowances. The Organization included 18 identical letters sent in response to other claims in the on-property handling. Whether the claim was for overtime or an unjust treatment hearing, the Carrier’s responses were indistinguishable.

Such pro forma handling does little to frame the issues in dispute or to determine the relative merits of the parties’ positions. We hold that where the Carrier issues nothing more than a blanket denial letter setting forth only a boilerplate explanation for the denial which does not address the claim in any specific manner, it fails to give reasons for the disallowance. While we hesitate to sustain a claim on technical grounds, the parties themselves agreed what must occur when the Carrier fails to timely disallow the claim as contemplated.

The claim must be allowed as presented but shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances in the future.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of October 2020.